

multiple interexchange carriers, the Commission paradoxically would be forced simultaneously to adopt extensive regulations providing for rate-making and review of charges at every jail, prison, detention center and correctional facility, whether it be federal, state or local.

In seeking new FCC rules that will completely overhaul the fundamental structure of telephone systems in correctional facilities, the Petitioners first have much too easily shrugged aside the rights of these facilities to manage their own property and security concerns. The Commission cannot and should not compel correctional facilities, which are not regulated by the FCC, to adopt a particular network architecture and provide access to their property in a specific manner. This is particularly true in the case of correctional facilities, whether owned or managed publicly or privately on behalf of the department of corrections, because they have historically been recognized as having the greatest interest in deciding who is permitted access to their telephone calling services, and on what terms.

As with the proposed requirement that all prisons make available to inmates a pre-paid debit calling option, Petitioners can point to no specific authority in the Act that would support a requirement that correctional facilities establish the kind of "prison telephone system" proposed in the Petition, incorporating mandatory access to the private branch exchange ("PBX") or enterprise switch operated by the prison telephone system on the part of multiple exchange carriers. Section 201 affords only the most general authority to ensure reasonable rates and conditions, without specific authority to mandate types of networks or architectures. And Section 226's requirement that call aggregators provide their customers with access to the carrier of their choice has been specifically held inapplicable to inmate calling services.⁴⁵ The

⁴⁵ See *supra* at 10-11 & nn.12-14.

Petitioners do not cite any specific authority supporting the adoption of their proposed required network architecture, much less the requirement that inmate calling systems be made available for interconnection and choice amongst multiple interexchange carriers.

In seeking to establish competition for each and every long distance telephone call made by an incarcerated inmate at a rate fixed by the FCC under their proposed network architecture, the Petitioners' cite the Commission's decision to prevent carriers from entering into exclusive agreements for the provision of telephone service to office buildings and other multiple tenant environments ("MTEs").⁴⁶ But the proposal of the Petitioners is not consistent with, and extends far beyond, the proposal adopted by the Commission in the *Competitive Networks Proceeding*. In that proceeding, in order to ensure that the incumbent local exchange carrier or a fast-moving competitive local exchange carrier did not adversely restrict carrier choice of tenants in MTEs such as office buildings, the Commission prohibited "carriers, *in commercial settings*, from entering into contracts that effectively restrict premises owners or their agents from permitting access to other telecommunications service providers."⁴⁷ The Commission expressly refused to apply this prohibition to residential settings at that time, and specifically excluded hotels, or similar establishments, from the prohibition.⁴⁸ The proposal of the Petitioners thus would place a greater restriction on the operators of privately-owned or managed state correctional facilities than the FCC currently places on operators of apartment

⁴⁶ See Petition at 16-17, citing *Promotion of Competitive Networks In Local Telecommunications Markets*, First Report and Order and Further Notice of Proposed RuleMaking, 15 FCC Rcd. 22983 at ¶¶ 27-39 (2000) ("*Competitive Networks Proceeding*").

⁴⁷ *Competitive Networks Proceeding*, 15 FCC Rcd. at ¶ 27 (*emphasis added*).

⁴⁸ *Id.* ¶¶ 37-38 & n.92. The Commission noted that if a hotel was a tenant in an MTE, the prohibition would apply to the MTE. *Id.* ¶ 38 n.92.

buildings, condominiums and hotels, providing inmates with greater access to carrier choice than residents of multiple tenant dwelling units and hotels.

Moreover, in the *Competitive Networks Proceeding*, the Commission acted expressly to protect commercial choice in providers of competitive telecommunications services because the Commission feared that established ILECs and better situated CLECs were entering such agreements to disadvantage competitors seeking to serve large businesses with multiple locations.⁴⁹ The Commission was faced with complaints that many carriers seeking access had been denied, or had been unreasonably delayed access, to existing and potential customers in MTEs that they desired to serve.⁵⁰ Here, no carrier has contended that access to existing and potential customers has been unreasonably denied. Instead, the record reflects carriers' understanding that multiple access may not be supported by the market.⁵¹

Of course, the Commission's specific prohibition against exclusive agreements in the *Competitive Networks Proceeding* was immensely less intrusive than the requirement urged on the Commission -- and correctional facilities -- in this proceeding by the Petitioners. In the *Competitive Networks* proceeding, the Commission refused to mandate access by multiple carriers, much less the rates and terms of access; refused to establish mandatory MTE network architectures; and refused even to mandate a uniform demarcation point as a minimum point of

⁴⁹ See, e.g., *id.* ¶¶ 17-24.

⁵⁰ *Id.* ¶¶ 17-19.

⁵¹ Finally, it should also be noted that in the *Competitive Networks Proceeding* the FCC did not reach out to invalidate or modify any exclusive contracts existing at the time of the adoption of the rule, and instead expressed a desire to move forward cautiously -- certainly more cautiously than the Petitioners urge the Commission to move with respect to contracts governing the provision of inmate calling services. Compare *Id.* ¶ 36 with Petition at 22 (existing MTE contracts not modified while Petitioners seek Commission order mandating exclusive prison

entry to promote the facilities-based competition that was at the heart of its action prohibiting exclusive MTE service agreements.⁵² In this proceeding, the Petitioners would have the Commission prohibit exclusive agreements, *and then* mandate that corrections facilities adopt a specific "prison telephone system" network architecture. Petitioners' proposal asks the FCC to require prison telephone systems to be operated by one carrier at an established rate of no more than seven cents per minute, and then provide access at the PBX or enterprise switch to a multiplicity of interexchange carriers. The Commission's much more limited action in the *Competitive Networks Proceeding* of simply preventing carriers from entering exclusive dealing arrangements with commercial MTE landlords cannot support the extensive regulatory intrusion encouraged by the Petitioners.⁵³

The extensive regulatory over-reaching required to implement the Petitioners' proposed "prison telephone system" and rate regulation is especially problematic given the legitimate countervailing interests of the state and local authorities in ensuring that their privately-managed or owned facilities maintain technical security procedures of their own choosing at affordable costs. The Petitioners simply fail to countenance the importance of ensuring that correctional facilities are able to establish a network architecture that meets the security and cost requirements established by state and local authorities. Correctional facilities, whether privately managed for the benefit of the state and local authorities or owned and

contracts to be modified within one year).

⁵² *Competitive Networks Proceeding*, ¶¶ 50-53.

⁵³ Instead, given the lack of any evidence in the record that multiple carriers desire access to or could simultaneously provide inmate calling service, the Commission's action declining to establish a ban or cap on exclusive agreements for access to cable inside wiring appears to be more relevant precedent. See *Telecommunications Services Inside Wiring*, First Order On

managed by the authorities themselves, cannot afford to lose control over decisions on how inmate telephone systems operate in their prisons. This record is replete with testimony regarding this essential fact, whether provided by the inmate calling service providers or the State Departments of Corrections, and whether expressed eight years ago, or expressed last month.⁵⁴ Whenever an inmate dials a telephone number, that inmate travels beyond the correctional facility, and correctional administrators must be free to make use of any telecommunications surveillance system that will enable them to monitor the telephone lines and ensure that the system is not vulnerable to inmate abuse.⁵⁵ Correctional facilities must be able to adopt the newest technology of their choice without considering whether and at what cost it can be integrated into an FCC-mandated network architecture and billing system.

Reconsideration And Second Report and Order, 18 FCC Rcd. 1342 (2003) at ¶ 68.

⁵⁴ See, e.g., Comments of Lubbock County Sheriff's Office, CC Docket 96-254, received July 5, 1996 ("we must be assured that we have ultimate control on the decisions of who our Intra and Inter Lata service providers will be.... We understand the inmate, and you must not remove the ability to allow us, as corrections professionals, to design and tailor our inmate telephone system."); Comments of Roger Werholtz, Secretary, Kansas Department of Corrections, February 4, 2004 ("The pending petition does not advance substantial or compelling reasons to override the state's interests in determining how inmate telephone services will be provided.... Nothing the Commission does regarding inmate telephone services should in any way impair the state's ability to ensure that all of these security features remain in place and are effective."); Comments of Peter V. Macchi, Massachusetts Department of Corrections, February 11, 2004 ("We do not want to lose our ability to make decisions regarding how inmate telephone systems will operate in prisons. We see this petition as a potential threat to our ability to manage our prisons and provide public safety in the Commonwealth."); Comments of InVision Telecom, Inc., filed June 28, 1996, at Exhibit A (listing special functions of inmate telephone systems); Comments of The Inmate Calling Service Providers Coalition, June 21, 1999, at 6-10 (discussing unique needs of correctional facilities in providing for inmate calling services); Comments of WorldCom, Inc., on Petition for Declaratory Ruling Filed By Outside Connection, Inc., April 16-17, 2004 (addressing potential threat caused by reorigination capability).

⁵⁵ See *Carissa B. Caramanis*, Keeping Watch Over The Phone Lines, February 8, 1999, The Corrections Connection Network, www.corrections.com/news/technology/020899.html (discussing Gloucester County (Virginia) Sheriff's Office and desire to implement sophisticated call monitoring technology).

As Bohacek and Kickler discuss in their Joint Declaration, the proposed “prison telephone system” may not even be functional, much less provide the requisite unassailable assurance that correctional facilities can meet their interest in maintaining secure environments and preventing criminal and fraudulent activity.⁵⁶ The Dawson proposal, advanced at the urging of the Petitioners, presents technical barriers and costs for implementation that currently are insurmountable to the extent necessary to support a rule of general application.⁵⁷ As an initial matter, there is no assurance that the hardware, including enterprise switches, and software and other components of the proposed network architecture are available to implement the necessary functions to meet the legitimate security and anti-fraud interests of corrections facilities.⁵⁸ For example, the enterprise switches and PBXs used in prisons today are not designed to provide inmates the option to select the interexchange carrier of their choice.⁵⁹ Additionally, call routing becomes much more complicated when the provision of service through multiple carriers is desired from the prison switch or PBX.⁶⁰ Furthermore, the incorporation of necessary data links, interfaces, and procedures, while always technologically possible, has not been shown to be without risk, and may not be economically feasible.⁶¹ The introduction of multiple

⁵⁶ Joint Bohacek & Kickler Declaration, ¶ 36 (“proposal cannot be implemented without software and hardware development, deployment of new or modified systems in the networks of all participating IXC’s and LEC’s, and modification of the underlying [prison telephone system].... it would be years before the capabilities would be widely available.”)

⁵⁷ See *id.* ¶¶ 4-16 (assessing network architecture requirements).

⁵⁸ See *id.* ¶¶ 6-12 (discussing prison PBX/switch inadequacy and necessary software developments).

⁵⁹ *Id.* ¶ 6.

⁶⁰ See *id.* ¶¶ 7-9 (discussing call routing and system changes).

⁶¹ See *id.* ¶¶ 10-12, 15 (discussing software changes that would be necessary).

interexchange carriers, for example, may make the system more prone to intentional or unintentional abuse through the creation of increased opportunities for call reorigination.⁶²

At a minimum, according to Bohacek and Kickler, even if the Petitioners' proposal eventually proves to be sufficiently efficacious to justify the confidence of law enforcement personnel and correctional facilities, adoption of the proposal would require major changes to the equipment and network architecture of a substantial number of correctional facilities.⁶³ Substantial changes would need to be made to the billing and accounting systems used for inmate calling services, to the extent the system can be implemented at all.⁶⁴ Even with all the necessary modifications, the introduction of multiple interexchange carrier access to the switch operated by the prison telephone system decreases the level of control that the correctional facility can maintain over the system and increases the potential for breaches of the security protocols established to aid law enforcement officials and protect the public.⁶⁵ Given the extraordinary regulatory action that has been proposed by the Petitioners without specific statutory support, including the mandate of a required prison telephone system architecture and FCC-mandated intercarrier rates to be charged, the Petitioners have not met their burden of demonstrating that the great variety of correctional facility administrators can rely on the proposed system to meet their legitimate security and anti-fraud interests in a timely manner at an affordable cost.

⁶² See *id.* ¶¶ 17-20 (discussing potential for system abuse and security failures).

⁶³ *Id.* ¶¶ 3, 6, 11-14, 36 (discussing some of the changes, and conclusions regarding the time and expense necessary to implement them).

⁶⁴ See *id.* ¶¶ 9-14 (discussing network functions that affect billing).

⁶⁵ See *id.* ¶¶ 17-20 (discussing possible security weaknesses of mandated network architecture).

The Petitioners, for that matter, have ignored the significant and varying costs of correctional facilities in providing inmate calling services. As Bohacek and Kickler note, Dawson has suggested one network architecture that purports not to be sensitive to the number of inmates, the security level of the prison, or to its geographic location, and such an approach is not reasonable.⁶⁶ For example, even Dawson's own material recognizes that inmate populations can range from 76 to 3,606 prisoners.⁶⁷ The implementation of Dawson's "one-size-fits-all" proposal for small populations in rural areas will be problematic, given the need to spread substantial overhead over a small population.⁶⁸

Finally, the Petitioners have ignored completely the role and function of local intrastate telephone calls in this system. The proposal does not provide any indication of the role of the prison telephone operator in completing local calls, charging for local calls, and accounting for necessary costs of completing local calls. For example, it is unclear whether the local exchange carrier would be treated similarly to the multiple interexchange carriers, from the perspective of interconnection, billing and software integration, or treated in some other manner.⁶⁹ It simply is not possible to evaluate the efficacy of Dawson's proposal without understanding LEC integration. The potential for system abuse, and experience with prohibitive costs, is exacerbated by this unknown factor as well.

⁶⁶ *Id.* ¶ 16.

⁶⁷ Petition, Attachment A, Exhibit 5.

⁶⁸ See Joint Bohacek and Kickler Declaration, ¶ 16.

⁶⁹ *Id.* ¶ 15.

VI. The Commission Should Not Establish A Rate Setting and Tariff Process For Inmate Calls From Correctional Facilities.

As demonstrated above, the absence of statutory authority, inconsistency with recent Commission precedent, problems with the reliability of function, and questions about the time and cost for developing and implementing the Petitioners' proposal are sufficient to prevent the FCC from mandating its adoption. Nevertheless, even if all of these factors were not enough, it is clear that the Petitioners' proposal incorporates an FCC initiative to develop a new regulatory structure to evaluate and even establish the rates to be charged by prison telephone systems. The Petitioners presume to urge the Commission, in this proceeding, to mandate that prison telephone systems be paid, absent justification in an administrative proceeding, no more than seven cents per minute for their provision of access to their inmate calling services, at least with respect to traffic that eventually is transported for termination by an interexchange carrier.⁷⁰ For a variety of reasons, the Commission should reject the Petitioners' invitation to this dance.

First, the cost analysis and estimates that Dawson provides in support of the Petition, and its seven cents per minute inmate calling service rate, are flawed in a variety of respects.⁷¹ As Bohacek and Kickler demonstrate, Dawson's expense assessment underestimates the costs of various factors, including switches, trunks, and the development of software to integrate the required system functions.⁷² The Dawson cost analysis also ignores a variety of other costs in the system, including the cost of capital, training and development for the use of more advanced platforms, additional trunking and billing links, as well as other hardware and

⁷⁰ See Petition at 3, 8, 19-20.

⁷¹ Joint Bohacek and Kickler Declaration, ¶¶ 25-35.

⁷² See *id.* ¶¶ 25-26, 29-32.

software integration costs.⁷³ This is not surprising, given that Dawson built his cost estimate on a very limited set of data points, including public SEC filings by Evercom, isolated filings in this proceeding, and a “study” of three CCA facilities that are not necessarily representative of the wide range of facilities providing for inmate calling services today, simply to assess whether his proposed system was “economically feasible.”⁷⁴ In any event, neither the Dawson analysis nor the record in this proceeding is sufficient to establish any basis for the Commission’s adoption of an inmate calling service rate analysis, much less the rate proposed by the Petitioners.

Second, even if the Commission were to undertake a ratemaking effort in this proceeding or any other proceeding, it would be arbitrary and capricious to maintain, as Dawson apparently does, that a “one-size-fits-all” rate can be mandated for inmate calling services given the great variety of jails, prisons, detention centers and correctional facilities to which it would apply. Given the disparity in operating situations, it cannot be presumed that the FCC will be able to establish one rate that properly reflects the actual costs of providing inmate calling services, and provides sufficient profit incentive for a carrier to undertake the risk of serving as a “prison telephone system.” In fact, there is absolutely no assurance that inmate calling service providers will choose to provide business as “prison telephone systems,” or even participate as interexchange carriers, on terms that provide the necessary components to assure that the security and anti-fraud concerns of correctional facilities will not be compromised. The Petitioners have presumed with far too little support that if the FCC mandates it, the carriers will come to this

⁷³ See *id.* ¶¶ 28, 33-35.

⁷⁴ Dawson Statement, ¶ 50. Dawson does not appear to have visited these facilities, or spoken to employees of these facilities who were familiar with the security and cost issues at the facilities.

new market -- a market that now will involve substantial new Commission involvement in structural regulation and rate evaluation for many years to come.

Third, the proposal of the Petitioners gives absolutely no thought to the manner in which correctional facilities themselves will recover their costs in implementing the Petitioners' proposal, much less providing physical space, administrative personnel, and supervision of the newly-proposed inmate calling system, except to prohibit explicitly, and implicitly, recovery of any of these costs through the assessment of commissions.⁷⁵ The revenues associated with the commission system have made it possible for correctional facilities to provide physical space for inmate calling systems, as well as personnel for oversight, review and tracking of inmate calls and the development of sophisticated, automated secure calling features that serve the needs of the prison and general population. As a general matter, revenues associated with the commission system have improved the quality and quantity of telecommunications services available to the inmate population, including, for example, reducing the number of inmates per telephone.⁷⁶

A substantial number of states also require payment of commissions directly to the state, taking the revenues produced by the commission system and investing them in specific inmate benefit funds or otherwise using them to offset the costs of providing prison services, including telephone services.⁷⁷ For example, by statute in Arkansas, commissions are paid to a

⁷⁵ See, e.g., Petition, at 8-9, 21; Attachment A, ¶ 67. Indeed, the costs of the correctional facilities and personnel are in no way included in the Dawson analysis of the viability of his proposed system.

⁷⁶ See Commonwealth of Virginia, Members of the Joint Legislative Audit and Review Commission, Review of the Department of Corrections' Inmate Telephone System, January 1997, at 6 (since implementing commission payment system, inmates per phone decreases in Virginia from 34 to 18).

⁷⁷ See Comments of Roger Werholtz, Secretary, Kansas Department of Corrections, filed

sheriff's office fund, and all of those funds are to be used for communications facilities and equipment, or up to 50% of the funds can be used to maintain and operate county jails. In California, Mississippi, Montana, Ohio and Oregon, by further example, revenues and commissions are directed to inmate welfare, activity and program funds. The FCC must understand that privately-administered prisons do not operate any differently than state-run facilities with respect to the payment and use of commissions.

As a practical and logical matter, the state and local authorities have the ability to mandate how inmate calling service commissions are used, and where they are paid, because private correctional facility operators like CCA must obtain contracts for their services in a competitive manner. To the extent commissions are paid incorporating a margin in excess of the actual cost of space, personnel and other resources necessary to provide inmate calling services, it is the state or local authorities that ultimately control the assignment and allocation of these funds, because that authority has the ultimate control over the facility resulting in the payment.

The FCC must recognize that it cannot and should not act unilaterally with respect to the level of commissions. Changes in the commission structure will impact the operating budgets of a large number of inmate facilities and departments of correction, and indeed, the operating budgets of some states that will either need to eliminate or limit some inmate services, including potentially inmate calling services, or raise additional revenues to pay for them. To the

February 4, 2004 (commissions deposited in Inmate Benefit Fund used primarily to support programs and services for the inmate population); Comments of WorldCom, Inc., May 24, 2002, at 1-2; ("state budgets rely on commissions paid by inmate calling service providers ... [and] ... budgeting authorities subsequently allocate funds from general revenues to build and maintain their prison systems.... The system has also made it possible to provide more extensive, and more secure, telecommunications services.").

extent the Commission seeks to reduce inmate calling rates by eliminating or capping commission rates, or even by establishing the charges for inmate calls, the revenues available to state and local correctional facilities will be reduced. And to the extent that the FCC desires to see prison facilities implement structural changes that would permit the development of more calling options, the Petitioners' proposed elimination of commissions will place even more stress on the operating budgets of governmental authorities that are experiencing significant growth in the number of inmates incarcerated in their states.

Even a cursory review of these issues, and the issues addressed by the technical and cost analysis presented by Bohacek and Kickler in their Joint Declaration, should caution the Commission strongly against entering the ratemaking arena in the context of inmate calling services. The task would be enormous and difficult, subject to judicial challenges based on jurisdiction and rationality, and include the possibility that carriers will avoid the risk of providing the regulated service for fear that they will not be able to recover the sums they expend in the hope of achieving a limited rate of return.

Most importantly, this is a decision in which the states not only have a substantial and legitimate interest, but already have begun to act based on their own assessments and balancing of the rehabilitative, security, and financial interests involved. CCA's summary review of pending legislation in the states has revealed that at least ten states have bills pending that would limit, phase out or otherwise impact the charges of commissions or rates and the methods of offering inmate calling services.⁷⁸ Other jurisdictions already have enacted such

⁷⁸ These states include California, Louisiana, Maryland, Massachusetts, Mississippi, Nebraska, New Jersey, Oklahoma, Rhode Island and Virginia.

legislation.⁷⁹ The FCC should not unilaterally substitute its own judgment regarding the balancing of different levels of inmate calling service to be provided, inmate calling revenue to be allocated to prison operating budgets, and the security and anti-fraud measures to be adopted and supported at state and local prisons.

This is especially true where commission charges do not subject inmate calling rates to unending upward pressure. As various inmate calling service providers have recognized, prison authorities “nearly universally” require inmate calling service bidders to offer rates at or below the collect call rates of the highest tariffed operator assisted fees and rates.⁸⁰ These rates are not specific to the inmate population, but apply generally to the public at large. These local and intrastate rates are generally approved by state commissions, and the interstate rates are determined by market conditions. Moreover, as discussed above, states are actively regulating limits on charges for inmate calling services based upon their assessment of the rehabilitative value of inmate calling services, the costs of providing inmate calling services, and the appropriate charges for inmate calling services. In such circumstances, inmate calling service rates do not spiral upward based on uncontrolled bidding on commission levels, because carriers cannot simply reflect any increase in commission bid in their charges for inmate calls.


⁷⁹ These jurisdictions include Connecticut, Georgia, the District of Columbia, and New Mexico.

⁸⁰ Comments of WorldCom, Inc., May 24, 2002, at 7.

VII. Conclusion

For the reasons provided in these Comments and the attached Joint Declaration of Peter K. Bohacek, Ph. D., and Charles J. Kickler Jr., Corrections Corporation of America opposes the proposals of the Petitioners.

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ATTACHMENT A

JOINT DECLARATION OF PETER K. BOHACEK, Ph.D. AND CHARLES J. KICKLER JR.

We, Peter K. Bohacek, Ph.D. and Charles J. Kickler Jr. have reviewed the Affidavit of Douglas A. Dawson offered by Petitioners Martha Wright, *et al* ("Petitioners") in support of their request to the Federal Communications Commission ("Commission") and in response to that Affidavit we declare as follows:

1. I, Peter K. Bohacek, earned my Ph.D. in Electrical Engineering at Yale University, worked for AT&T for 26 years, where I had assignments at AT&T Bell Labs and AT&T Network Systems, now Lucent. While there I worked for many years in systems engineering of the toll and local networks, new switch design, design of new services and various marketing functions dealing with standards, priority setting and strategy. Subsequently I worked for a computer company (now part of HP) working on the intelligent network. After that I worked for a PBX manufacturer, Mitel, and then for a start up, Clarent, on Voice over IP telephony. Currently I have my own consulting company. My credentials and experience are detailed at Exhibit 1.

2. I, Charles J. Kickler, Jr. have 34 years of public and private local switched network experience where I have had hands-on responsibility for a range of telecommunications network functions, from maintenance and installation of a single central office to building and managing national and international networks. I have worked extensively on both customer and networks sides of telecommunications switches, in environments ranging from in-house PBX and Centrex provisioning and engineering for corporate and institutional clients (universities, prisons) to residential networks. I was involved in the dismantling of the Bell System networks

upon divestiture and in building new networks on the advent of local competition. In several of my roles, I became involved with purchasing and vendor management, interconnections issues, and co-carrier billing and inter-carrier call handling. My experience is detailed at Exhibit 2.

Summary of Findings:

3. Based on our experience, it is our conclusions that Dawson's proposal would be unworkable and even if the flaws were corrected, the costs to implement his design would be higher than stated. Contrary to his assertion that the proposed system "would meet all legitimate security, anti-fraud and other penological goals" (Dawson ¶ 75), it is our opinion that the introduction of multiple interexchange carriers ("IXCs") will open the system to risks of fraud and misuse. The use of debit or calling cards, as advocated by Dawson, will also create additional security risks and costs that are described below.

4. Dawson's proposal splits call handling and responsibility between one underlying prison calling system provider ("PCS") and the Local Exchange Carriers ("LECs") or multiple IXCs. His proposal appears to assume that interconnection to the PCS would be no different than equal access in a central office in the PSTN. However, implementation of "equal access" in a prison environment would require all of these providers to make major changes to their equipment and networks. This, in turn, would require their many equipment manufacturers and vendors to negotiate a new set of requirements, then implement those changes to the equipment they sell to the carriers. The process of actually implementing Dawson's proposal, even if it were feasible, would take years of development and implementation, and, contrary to his assertion, would not work with equipment and software that exist today, as described below.

5. Finally by way of introduction, the Dawson cost assumptions are flawed and fail to take into account the costs of significant software development, new and larger switches and other equipment that would have to be purchased, and new systems testing and administrative costs to ensure security and reliability. Most prisons tend to be located in rural areas where these costs and technical complexities are compounded.

Network Architecture:

6. In contrast to carrier switches used in the PSTN, today's enterprises switches that are commonly used in prison facilities are not designed for equal access. These enterprise switches or other prison network systems (e.g., PBXs) are designed to aggregate all traffic for one carrier to maximize efficiency. Dawson does not address the challenges that would have to be met to alter a PCS operated enterprise switch in order to make it possible to interconnect with multiple IXCs.

7. Dawson's proposal calls for the PCS and the LEC or IXC to jointly handle inmate calls. Currently and under Dawson's proposal, the PCS handles the penological requirements and remains in control of the call throughout its duration. The PCS may terminate the call if any of its security provisions have been violated. The introduction of multiple IXCs and inmate selection of his or her preferred carrier, however, is a new, complex feature that requires substantial changes to the PCS switch software and hardware. For example, call routing becomes more complicated -- requiring a series of voice prompts and understanding the caller's touch tone responses to select the IXC; requiring logic to determine if the selection is for this call only, all future calls, or a change to the previous selection; requiring the capability to route the inmate's call to the trunks leading to the selected IXC or blocking the call if no circuits are

available; and remembering that carrier's long distance charge and using it for the rate calculation.

8. Significantly, Dawson's proposal requires all PCS switches have several trunk groups available, each connecting to a different IXC (Exhibit 3, Slide 3) plus a trunk group connecting to the LEC(s) (Exhibit 3, Slide 2). It may be the choice of the prison administrator or the PCS provider to require each of these trunk groups to be able to handle a maximum number of expected calls to avoid having inmate calls blocked because their preferred carrier is not available. To avoid any blockage, the system must assume that at any given time, all phones in use will need to be connected to the same IXC, which causes an inefficient design and deployment of IXC trunks.

9. In addition, when the call is connected to the IXC, this carrier must be able to perform several new, unique actions that are implied by Dawson's proposal. First, the IXC must determine the inmate's debit (or calling card) number and balance and must verify the accuracy of the account status. At the point where the call is handed off from the PCS to the IXC, inmates may mistakenly or intentionally manually input a different debit card number, perhaps to avoid the cost of the call or to use a non-incarcerated person's number to be able to circumvent the preapproved calling list of numbers. This handoff creates opportunity for new approaches to breach anti-fraud and security measures.

10. To guard against such misuse, then, the PCS would perhaps try to establish a data link between the PCS switch and IXC switch (Exhibit 3 Slide 1) to transfer the correct information to the IXC. To do this is complicated, since no billing data interface exists between these entities. While some possibilities exist for future development, they all have problems. For example, a dedicated data link would be expensive, Signal Switching 7 ("SS7") protocol

does not exist on PCS switches, and in-band signaling would be open to fraud. Another possible option would be using the PRI channel of ISDN (Integrated Services Digital Network). But since ISDN is an international standard, this option would require the international standards bodies to modify the specification, or a non-standard, proprietary change would have to be worked out between the manufacturers of IXC and PCS equipment and then developed.

11. Some of the IXC systems in use today are capable of account verification but include other features that would be unsuitable for use with a PCS. For example, they have the ability to re-originate calls after the caller dials "#". This capability must be blocked to ensure inmates do not circumvent the approved list of numbers.

12. Dawson's proposal includes the novel idea that each IXC would handle billing and remit a portion of the call revenue to the PCS. Each IXC must make modifications to its billing system to be able to account for the actual charge each IXC has negotiated with the caller, and the underlying system fee to be paid by each IXC to the PCS. In addition, new interconnection agreements would have to be negotiated and finalized between each IXC and the PCS provider with customized terms and conditions.

13. It is our understanding that inmates are moved, not infrequently, from one facility to another, and even within one facility, may experience changes in the level of phone privileges available. Frequent audits would have to be made between the IXCs and the PCS regarding individual balance information and access/privileges, and new settlement rules would have to be developed between the PCS and all IXCs to resolve discrepancies and errors.

14. The adjustments and developments needed to make the handoff from PCS to IXC must be agreed upon by all major manufacturers supplying the IXCs and LECs and would be a major industry-wide undertaking. From our experience, such a coordinated definition of

interfaces followed by implementation takes several years and happens only when a reasonable return on investment exists. The market for ICS may not offer the economies of scale or scope to make such an effort worthwhile for the vendors.

15. Dawson's proposal does not address LEC network modifications that would be necessary in order for inmates to complete their local calls. (Exhibit 3 Slides 1 and 2.) For example, debit card billing would be performed by the carrier that takes the call from the PCS. For local calls, that would be the LEC which would have to have all the same features and capabilities as the IXC's.

16. Dawson has suggested one network architecture without regard to the number of inmates, the security level of the prison, or its geographical location. This "one size fits all" approach to inmate telephone architecture is not reasonable. Dawson's material shows that the inmate population ranges in size from 76 to 3,606 prisoners (Petitioners' Attachment A, Exhibit 5). If a standard system must be implemented in all facilities, the overhead in small locations will be very high since the costs for implementing Dawson's proposal are fixed and it does not appear reasonable to scale down the architecture. Moreover, in many remote areas, construction would be required to lay new cable.

Security:

17. The Dawson proposal spreads control of the inmate's call between several entities. Today, on any call, there are always two separate entities in control, the PCS and the IXC (or LEC). Since Dawson expects that many IXCs will provide long distance service, there will be many separate entities involved at each prison. The implementation of the Dawson proposal by various IXCs may differ and some may have security weaknesses which will

probably be quickly identified and exploited by inmates. To minimize security problems, extensive testing must be performed with each IXC to insure not just proper handling and billing, but proper response to attempted fraud and equipment malfunction. In addition to automated testing, extensive manual fraud attempts would have to be tested (Exhibit 3 Slide 3). Each incident will require more complicated investigation and analysis involving the PBX, LEC, and IXCs' systems in order to resolve current problems and deter future fraud and abuse.

18. If an inmate call is made to an approved number, it might be possible to route the call to another number through the initial recipient's call forwarding feature or to add a third party through a conference feature. Call forwarding permits a call to be automatically routed to another number without any further dialing. Either the call must terminate on an SS7 switch or live operators, monitoring every call, would be required to detect call forwarding.

19. It is unclear from the Dawson proposal whether resale carriers and others using Least Cost Routing would be available to inmates. If so, once an IXC has routed the call to another IXC by LCR, the PCS would not know what network a call was on at any given time, and whether that network had penological safeguards in place to meet the needs of the prison administration. (Exhibit 3 Slides 4 and 5.)

20. Improper operation of a system can be achieved by forcing it into an unusual or faulty mode. The more complex the system, the more opportunities exist for misuse and fraud. Although a properly modified IXC system should not respond to touch tone inputs or spoken commands, the Dawson prison network would be built as part of each IXC's system – which has these capabilities. It could be possible to get the system to respond to touch tone inputs and to confuse it by entering an improper debit card number. In systems with voice recognition, repeatedly saying things the system does not understand might also confuse the system, taking it

into default mode, bringing in an operator, exiting to another system, or doing something else unexpected and untested. If there is a bail-out capability to a live IXC operator, it is essential that the operator be prevented from originating a new call.

Debit or Calling Card:

21. Collect calling has proved to be the most secure system for prisoner use. Although some prisons have introduced debit card or calling card options, until now it has been up to the facilities administrators to determine the appropriateness of offering debit cards in addition to the collect call option. Before deciding to offer a debit card option, these administrators are able to take into account their specific concerns about security, the stability of their inmate population, the administrative costs and process, and their current IXC carrier's ability and willingness to make necessary modifications to the telephone network. (Exhibit 3, Slides 1-3.) Introduction of a debit system would not be as secure as a collect-card-only system. All debit systems are not created equal and they have not been designed to be security vehicles. Dawson's proposal is not clear on whether the cards would be provided and sold by the prisons or the IXCs. If the debit card is sold by the IXC, then the PCS would have to be modified to handle all field sizes and formats of the various IXCs. If the debit cards are sold by the PCS, then each of the IXCs must develop the capability to handle a debit card format that is likely different from its own format.

22. The administrative cost for implementing a debit system is high, whether it is a card provided and administered by the individual facility or a commercially available card offered by an IXC. The federal Bureau of Prisons (BOP) has developed and implemented its own system because it has been able to spread the costs across a large population of users. It is not clear that other systems typically operate on the scale that would make prison-issued debit

cards reasonably cost-effective. On the other hand, if the IXC's provide cards, the costs of linking the PCS to the IXC's would increase.

23. Notably, the BOP debit system does not appreciably increase security risks because the inmate calls are routed entirely over the FTS closed network. Calls do not get handed off to IXC's or even to LEC's in the FTS system used by the BOP.

24. The use of multiple IXC debit cards would increase the risk of non-inmate cards or account numbers being used. In addition, one IXC's card could not be used on another's platform. Multiple mediation platforms would be needed to track all cards to inmate calls, increasing billing reconciliation.

Costs:

25. Dawson asserts that competition will drive down costs but it is not clear that price discounts would be available for the amount of minutes involved in PCS long distance service. His model assumes a maximum of 130,000 minutes per month on average for long distance traffic from an average prison facility. When divided among multiple IXC's, the number of long distance minutes per month is diluted and the assumption that the IXC would be willing to provide facilities (T-1s) and maintenance at no charge may not be realistic. (Dawson ¶ 43.)

26. As noted above, prison administrators or PCS providers may require all phones be capable of interconnecting with all IXC's offered in that prison. (Exhibit 3 Slide 3.) Dawson's assumption that it would take \$14,400 for a carrier to serve 70 pay payphones (Dawson ¶ 64), fails to consider the increased cost that multiple IXC's would incur to serve those 70 phones. If the requirement is that each phone must be able to connect to each IXC, additional trunks would